

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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AHERN RENTALS, INC.,

Plaintiff,

v.

DAMELIO COMMERCIAL
CONTRACTING,

Defendant.

2:11-cv-1416-LRH-CWH

ORDER

Before the court is plaintiff Ahern Rentals, Inc.'s ("Ahern") motion for declaratory judgment. Doc. #78. Defendant Damelio Commercial Contracting ("Damelio") filed an opposition to the motion (Doc. #85) and an objection to evidence submitted in support of the motion (Doc. #86). Ahern then filed a reply. Doc. #87.

Also before the court is defendant Damelio's cross-motion for summary judgment. Doc. #83. Ahern filed an opposition (Doc. #88) to which Damelio replied (Doc. #91).

I. Facts and Background

Defendant Damelio is a general contracting company doing business in New Jersey. On February 21, 2008, Damelio allegedly entered into a rental agreement with Ahern for the rental of a boom lift for use on a project also located in New Jersey.

In June 2008, non-party Richard Mackay, a Damelio employee was using the boom lift and suffered severe injuries to his hand. Mackay then sued Ahern in an action initiated in New Jersey

1 state court. Subsequently, Ahern filed this action for indemnification against Damelio. Doc. #1.
2 Thereafter, the parties filed the present motions. Doc. ##78, 83.

3 **II. Discussion**

4 The court has reviewed the documents and pleadings on file in this matter and finds that the
5 parties' motions for summary judgment are premature and improperly supported. Both Ahern and
6 Damelio's motions contain unauthenticated evidence that can not be considered by the court,
7 including the proffered copies of the underlying equipment lease agreement over which this action
8 is based. Discounting this evidence, the court cannot properly consider the parties' arguments.
9 Therefore, the court shall deny both motions.

10 However, because it seems that the parties could obtain additional evidence and properly
11 authenticate the already proffered evidence with additional discovery, especially in light of the
12 parties' claims that they only engaged in very limited discovery before filing the present motions,
13 the court shall allow the parties to reopen discovery and seek additional discovery in this action.
14 Within ten (10) days after entry of this order, either party may file a motion to reopen discovery
15 with the magistrate judge. After the close of any additional discovery period, the parties may, if
16 they desire, file renewed motions for summary judgment.

17
18 IT IS THEREFORE ORDERED that plaintiff's motion for declaratory judgment
19 (Doc. #78); defendant's motion for summary judgment (Doc. #83); and defendant's motions to
20 strike (Doc. ##95, 96) are DENIED without prejudice.

21 IT IS SO ORDERED.

22 DATED this 19th day of August, 2014.

23
24 
25 LARRY R. HICKS
26 UNITED STATES DISTRICT JUDGE